


PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 77025 Ca.		FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/EP2005/000526		International filing date (day/month/year) 20.01.2005	Priority date (day/month/year) 17.02.2004	
International Patent Classification (IPC) or national classification and IPC A23G9/16			EINGEGANGEN BEYER 17. Feb. 2006	
Applicant NESTEC S.A. et al.			FRIST BIS: VORNOTIERT AM:	
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 20.01.2005		Date of completion of this report 17.02.2006		
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016		Authorized Officer Boddaert, P Telephone No. +31 70 340-		



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International application No.
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Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-27 as originally filed

Claims, Numbers

1-29 as originally filed

Drawings, Sheets

1/12-12/12 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
 4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1,14
Inventive step (IS)	Yes: Claims	
	No: Claims	1-29
Industrial applicability (IA)	Yes: Claims	1-29
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

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Re Item V

Reference is made to the following documents :

- D1 : US 5 345 781 A (FELS ET AL) 13 September 1994 cited in the application
D2 : WO 97/39637 A (UNILEVER PLC) 1997-10-30 cited in the application
D3 : US 5 024 066 A (GOAVEC ET AL) 18 June 1991 cited in the application
D4 : US 3 954 366 A (FIELDS ET AL) 4 May 1976 cited in the application
D5 : WO 99/24236 A (RAUWENDAAL) 20 May 1999 cited in the application

1. The present application does not meet the requirements of Article 33(2) PCT because the subject-matter of claims 1,14 is not new.

Remark : The terms 'zone-wise adapted mechanical treatment', 'carried such that is achieved' and 'variable screw geometry along the extruder length locally adjusted according to the local viscosity with respect to ...' used in claims 1,14 define the subject-matter in terms of the result to be achieved or do not appear to have a precise meaning , contrary to Article 6 PCT. These unclear features have not been taken into account for assessing novelty. (see Item VIII below).

In the attempt to solve the above issues , it is reminded that unity of invention should be respected.

Claims related to the device are interpreted as claims for a device 'suitable for' the process described.

Documents D1-D3 all intrinsically disclose (figures , claims) low temperature extrusion of frozen aerated mass with 'zone wise adapted mechanical treatment.

The subject-matter of claims 1,14 is therefore not new.

Also documents D4,D5 intrinsically disclose (figures , claims) a device suitable for low temperature extrusion of frozen aerated mass with variable screw geometry.

The subject-matter of claim 14 is therefore not new.

2. Dependent claims 2-13,15-29 do not contain any features which , in combination with the features of any claim to which they refer , meet the requirements of the PCT in respect of inventive step (Article 33(3) PCT) , because in these claims a change is defined which comes within the scope of the customary practice followed by persons skilled in the art , especially as the advantages thus achieved can readily be foreseen.

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Re Item VIII

a. Claims 1,14 do not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined. The claims attempt to define the subject-matter in terms of the result to be achieved, which merely amounts to a statement of the underlying problem, without providing the technical features necessary for achieving this result.

b. Claims 1,14 do not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined. The functional statements do not enable the skilled person to determine which technical features are necessary to perform the stated functions.

Some of the features in the apparatus claim 14 relate to a method of using the apparatus rather than clearly defining the apparatus in terms of its technical features. The intended limitations are therefore not clear from this claim, contrary to the requirements of Article 6 PCT.

c. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).